

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 1099

(Senator Manno, *et al.*)

Finance

Economic Matters

**Workers' Compensation - Occupational Disease Presumptions - Paid Rescue
Squad Members and Paid Advanced Life Support Unit Members**

This bill extends to all *paid* rescue squad members and *paid* advanced life support unit members an occupational disease presumption for (1) heart disease, hypertension, or lung disease that results in partial or total disability or death and (2) specified cancers and leukemia that are caused by contact with a toxic substance the individual has encountered in the line of duty.

The bill must be construed to apply only prospectively and may not be applied or interpreted to have any effect on, or application to, any claims arising before the bill's October 1, 2014 effective date.

Fiscal Summary

State Effect: Transportation Trust Fund expenditures may increase due to increased workers' compensation benefits for paid advanced life support unit members employed by the Maryland Aviation Administration (MAA). Any increase in hearings before the Workers' Compensation Commission can be handled with existing resources. Revenues are not affected.

Chesapeake Employers' Insurance Company Effect: Chesapeake Employers' Insurance Company (Chesapeake) expenditures may increase due to increased workers' compensation benefits paid in any affected counties with Chesapeake policies. Revenues are not affected.

Local Effect: Local government expenditures increase, potentially significantly, in jurisdictions that directly or indirectly employ paid rescue squad members and paid advanced life support unit members due to increased workers' compensation benefits

paid as a result of the bill. Revenues are not affected. **This bill may impose a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Bill Summary: The occupational disease presumption for specified cancers only applies when the paid rescue squad member or paid advanced life support unit member (1) has completed at least 10 years of service as a firefighter, firefighting instructor, rescue squad member, advanced life support unit member, or some combination of those jobs in the department where the individual currently is employed or serves and (2) is unable to perform the normal duties of a firefighter, firefighting instructor, rescue squad member, or advanced life support unit member because of the cancer or leukemia disability.

Current Law: Workers’ compensation law establishes a presumption of compensable occupational disease to certain public employees who are exposed to unusual hazards in the course of their employment. It is assumed that these injuries or diseases are due to the employees’ work and, therefore, require no additional evidence in the filing of a claim for workers’ compensation. As shown below, generally presumptions are based on particular occupations and their associated health risks.

<u>Type of Personnel/Occupation</u>	<u>Type of Disease</u>
Volunteer and career firefighters and firefighting instructors; fire marshals employed by an airport authority, a county, a fire control district, a municipality, or the State; volunteer rescue squad members; and volunteer advanced life support unit members	Heart disease, hypertension, or lung disease that results in partial or total disability or death Specified cancers under specified conditions
Deputy sheriffs, police officers, and correctional officers of specified counties	Heart disease or hypertension that results in partial or total disability or death
Department of Natural Resources paid law enforcement employees, park police officers of the Maryland-National Capital Park and Planning Commission (M-NCPPC), and certain other employees of M-NCPPC	Lyme disease under specified conditions

Under these circumstances, a covered employee is entitled to workers' compensation benefits in addition to any benefits that the individual is entitled to receive under the retirement system. The weekly total of workers' compensation and retirement benefits may not exceed the weekly salary paid to the individual.

Although statute is silent on the issue, occupational disease presumptions have long been considered rebuttable presumptions. Two court decisions address the use of "is presumed" in reference to occupational diseases in current law, specifying that the term "without contrary qualification, should be read to be a presumption, although rebuttable, of fact." (See *Board of County Commissioners v. Colgan*, 274 Md. 193, 334 A.2d 89 (1975) and *Montgomery County Fire Board v. Fisher*, 53 Md. App. 435, 454 A.2d 394, aff'd, 298 Md. 245, 468 A.2d 625 (1983).) However, the Court of Special Appeals has stated that, "after the last injurious exposure to a hazard and the conclusion of employment the nexus between an occupational disease and an occupation becomes increasingly remote." (See *Montgomery County, Maryland v. Pirrone*, 109 Md. App. 201, 674 A.2d 98 (1996).)

Background: An emergency medical services (EMS) provider is an individual licensed or certified for basic or advanced life support by the EMS Board as a cardiac rescue technician, an emergency medical dispatcher, an emergency medical technician (EMT)-basic, an EMT-paramedic, or a first responder. An EMS provider supplies medical services prior to hospital services in order to prevent imminent death or aggravation of illness or injury, transport from the scene of a medical emergency to a hospital or appropriate facility, and interfacility critical care. The EMS Board, which governs the Maryland Institute for Emergency Medical Services Systems (MIEMSS), is responsible for approving EMS provider training courses and examining and certifying EMS personnel.

Rescue squads and rescue squad members are generally defined as individuals who engage in rescue activities. In many cases, this includes EMTs or paramedics; however, in some cases rescue activities are more specific activities such as searching for missing persons, responding to non-fire emergencies, or assisting during natural disasters.

The U.S. Bureau of Labor Statistics (BLS) reports that EMTs and paramedics held about 239,100 jobs in the United States in 2012. MIEMSS reports that there are 27,000 active licensed and certified EMS providers in the State, 4,002 of whom are trained in advanced life support; however, these numbers are a combination of paid and volunteer workers. BLS notes that most paid EMTs and paramedics work in metropolitan areas, while volunteer EMTs and paramedics are more common in small cities, towns, and rural areas. Volunteers generally work through fire departments or hospitals and may respond to only a few calls per month.

BLS reports that EMTs and paramedics have a higher rate of injury and illness than the national average for a variety of reasons. They are required to do considerable kneeling, bending, and lifting while caring for and moving patients, and they work both indoors and outdoors, as well as in all types of weather. They may also be exposed to contagious diseases, such as hepatitis B and AIDS and are, sometimes, injured by mentally unstable or combative patients.

State/Chesapeake/Local Effect: The bill affects MAA, Chesapeake, and certain local governments in a similar manner because advanced life support unit members are employed by MAA, and both advanced life support unit members and rescue squad members may be employed by certain self-insured, privately insured, and Chesapeake-insured counties; it is unclear whether the State employs affected providers in other agencies at this time. Thus, expenditures increase, potentially significantly, due to an increase in workers' compensation benefits paid as a result of the bill's expansion of occupational disease presumptions to paid advanced life support unit members and paid rescue squad members; however, the total number of *paid* advanced life support unit members and rescue squad members in the State and each jurisdiction, and any corresponding expenditure increase, cannot be reliably estimated at this time.

The Maryland Association of Counties (MACo) reports that most counties are not affected by bill because some do not employ advanced life support unit members or rescue squad members and, in some counties, all of the advanced life support unit members or rescue squad members are also firefighters (who are already covered for the bill's occupational disease presumptions under current law). For example, MIEMSS reports that rescue squad equipment is generally considered fire support apparatus and is often housed at a fire station and crewed by paid or volunteer firefighters. MACo advises that at least five counties are impacted by bill, while most others likely are not.

Chesapeake advises that cases with occupational disease presumptions are costly; over the past 10 years, Chesapeake has covered 369 presumption cases for a total cost of approximately \$16 million. This amounts to an average cost per claim of \$43,360 spread over multiple years. *For illustrative purposes only*, 25 paid advanced life support unit members or rescue squad members receive workers' compensation when they otherwise would not have as a result of the occupational disease presumptions established by the bill, costs could increase by as much as \$1.1 million statewide (25 cases x \$43,360) – spread across self-insured counties, Chesapeake, other insurers, and MAA and paid over multiple years.

Additional Comments: While State law does not define “advanced life support unit member” or “rescue squad member,” these terms are used to generally refer to providers. As noted above, EMT and other EMS providers may be considered as rescue squad

members, but the term is also used to describe full volunteer companies that assist with emergencies such as lost persons and natural disasters.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Carroll, Harford, Montgomery, and St. Mary's counties; City of Bowie; Town of Thurmont; Maryland Institute for Emergency Medical Services Systems; Maryland Department of Transportation; Injured Workers' Insurance Fund/Chesapeake Employers' Insurance Company; Maryland Association of Counties; Workers' Compensation Commission; U.S. Bureau of Labor Statistics; Department of Legislative Services

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Analysis by: Richard L. Duncan

Direct Inquiries to:
(410) 946-5510
(301) 970-5510